IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

CRL.A.No. 50 of 1999(A)

CC.3/1997 of JUDL.MAGISTRATE OF FIRST CLASS-III, KOTTAYAM

.....

APPELLANT/COMPLAINANT:

VENUGOPAL.P., S/O.P.N.PARAMESWARAN NAIR,
PURAYATHU VEETTIL,
KUMMANAM, KOTTAYAM.

BY ADV. SRI.K.K.CHANDRAN PILLAI

RESPONDENTS/ACCUSED & ANOTHER:

---

1. P.H.M.BASHEER, ADVOCATE,
SOUTHERN SIDE OF KOTTAYAM,
MUNICIPAL CEMETRY,
MUTTAMBALAM, KOTTAYAM.

2. STATE OF KERALA, REPRESENTED BY THE
DIRECTOR GENERAL OF PROSECUTION,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.T.M.ABDUL LATHEEF
R2 BY PUBLIC PROSECUTOR SRI.K.M.FIROZ

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.Appeal No.50 OF 1999

Dated 22nd November, 2006

JUDGMENT

This appeal is filed by the complainant in C.C.No.3/1997, a petition filed under section 138 of the Negotiable Instruments Act. When the complainant was absent on 29th September, 1998, the accused was acquitted under section 256(1) of the Criminal Procedure Code. The accused was evading notice from the criminal court and bailable warrant was issued. So, on 29th September, 1998 when the accused was acquitted, he was not present in the court. Magistrate has power to acquit the accused when the complainant is absent, but, it should not be done mechanically. It was explained by the complainant that when the case was posted on that day, he was transferred and was working at Vadakara and on various postings he was present. The appellant has explained reasons for his absence on that day. In the above circumstances, I set aside the order of acquittal and direct the Magistrate to proceed with the case. The accused entered appearance before this court. Both complainant and accused shall appear before the trial court

on 14.12.2006 and the Magistrate shall proceed with the case and dispose of the matter as early as possible.

The appeal is allowed by way of remand.

J.B.KOSHY
Judge

tks